



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 13, 2004

Ms. Elaine S. Hengen
Assistant City Attorney
The City of El Paso
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901

OR2004-5741

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 205026.

The El Paso Police Department (the "department") received a request for the 9-1-1 dispatch logs for a specified incident. You state that the department has provided the requestor with most of the requested information. You claim, however, that the remaining requested information is excepted from disclosure under sections 552.101, 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code apply only to an emergency 9-1-1 district established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These statutes make confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *Id.* at 2. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000. You state that the emergency communication district here is subject to section 772.318. Therefore, the 9-1-1 caller's originating address and phone

number you have marked are excepted from public disclosure based on section 552.101 of the Government Code as information deemed confidential by statute.

Next, you argue that the submitted information contains emergency medical service ("EMS") records that are protected under section 552.101 in conjunction with section 773.091 of the Health and Safety Code. Section 773.091 of the Health and Safety Code provides in part:

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

Health & Safety Code § 773.091. This confidentiality "does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services." *Id.* § 773.091(g). The portions of information the department has marked are not records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider. Therefore, none of the marked portions are confidential under section 773.091. As the department raises no further exceptions to disclosure for this marked information, it must be released to the requestor.

Additionally, you claim that the submitted information contains the cell phone number of a police officer, which is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(b)(1) excepts from required public disclosure an internal record of a law enforcement agency maintained for internal use in matters relating to law enforcement or prosecution if "release of the internal record or notation would interfere with law enforcement or prosecution." A governmental body that seeks to withhold information under section 552.108(b)(1) must sufficiently explain how and why the release of the information would interfere with law enforcement and crime prevention. *See* Gov't Code § 552.301(e)(1)(A); *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet. h.) (Gov't Code § 552.108(b)(1) protects information that, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws); Open Records Decision Nos. 562 at 10 (1990), 531 at 2 (1989). In Open Records Decision No. 506 (1988), this office determined that the statutory predecessor to section 552.108(b) excepted from disclosure "cellular mobile phone numbers assigned to county officials and employees with specific law enforcement responsibilities." *Id.* at 2. We noted that the purpose of the cellular telephones was to ensure immediate access to individuals with specific law enforcement responsibilities and that public access to these numbers could interfere with that purpose. *Id.*

You inform us that the cell phone number you have marked is assigned to a "police patrol section supervisor." You also state that this cellular phone is paid for by the City of El Paso, and is only used for official police business. You assert that the release of this cell phone number would interfere with law enforcement and crime prevention. Based on your representations and our review of the information at issue, we conclude that the department may withhold the cell phone number you have marked under section 552.108(b)(1) of the Government Code.

Finally, section 552.130 of the Government Code excepts from disclosure information that relates to a Texas driver's license or motor vehicle title or registration. *See* Gov't Code §552.130. We agree that the department must withhold the license plate number you have marked under section 552.130 of the Government Code.

In summary, we conclude that the department must withhold the 9-1-1 caller's originating address and phone number you have marked pursuant to section 772.318 of the Health and Safety Code, the cell phone number you have marked under section 552.108, and the Texas license plate number you have marked under section 552.130 of the Government Code. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free,

at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Lauren E. Kline
Assistant Attorney General
Open Records Division

LEK/seg

Ref: ID# 205026

Enc. Submitted documents

c: Mr. Rodrigo V. Ramos
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(w/o enclosures)